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ENVIRONMENTAL ADVOCATES
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San Francisco, California 94121
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Facsimile: (415) 358-5695
Email: csproul@enviroadvocates.com

Attorneys for Plaintiffs
BAYKEEPER and
WEST COUNTY TOXICS COALITION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BAYKEEPER, a non-profit corporation, and;
WEST COUNTY TOXICS COALITION, a non-
profit organization,

Plaintiffs,

v.

CITY OF RICHMOND, a municipal corporation;
WEST COUNTY WASTEWATER DISTRICT, a
municipal corporation; VEOLIA WATER NORTH
AMERICA OPERATING SERVICES, a limited
liability corporation; and WEST COUNTY
AGENCY, a joint powers agency,

Defendants.

Civil Case No.: C 05-03829 MMC

**PARTIAL STIPULATED DISMISSAL
OF CLAIMS;
~~[PROPOSED]~~ ORDER**

1 Plaintiffs Baykeeper and West County Toxics Coalition, and Defendants City of Richmond, West
 2 County Wastewater District, West County Agency and Veolia Water North America Operating Services
 3 by and through their attorneys of record, hereby enter into this stipulation, dismissal, and settlement
 4 agreement.

5 WHEREAS, Plaintiffs and Defendants (the "Parties") have entered into a partial settlement
 6 agreement that achieves a full and final settlement of all Plaintiffs' claims against West County Agency
 7 and certain, but not all, of Plaintiffs' claims against the remaining Defendants as set forth in Civil Case
 8 No. C 05-03829 MMC ("Settlement Agreement");

9 WHEREAS, a copy of this Settlement Agreement is incorporated herein and attached as Exhibit
 10 A to this stipulated dismissal and order;

11 NOW THEREFORE, the Parties jointly stipulate as follows:

12 1.
 13 All Plaintiffs' claims against West County Agency and Plaintiffs' Eighth, Ninth, Fifteenth, Sixteenth,
 14 and Seventeenth claims against all remaining Defendants relating to alleged effluent limitations
 15 violations from the Defendants' Wastewater Treatment Plants are dismissed in their entirety with
 16 prejudice. In addition, Complaint Paragraphs 64 and 65 are stricken and dismissed; and all references in
 17 the Complaint to biosolids, including in Paragraphs 36, 37, 45, 46, 47, 106, 107, 113, 116, are also
 18 stricken and dismissed.

19 2. Nothing in this Settlement Agreement shall have any effect on Plaintiffs' remaining claims
 20 against Defendants asserted in this action.

21 Dated: June 28, 2006

22 LAWYERS FOR CLEAN WATER, INC.

ENVIRONMENTAL ADVOCATES

23
 24 By: 

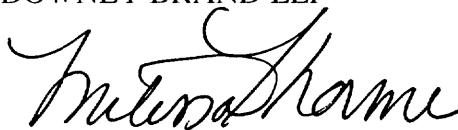
25 _____
 26 Daniel Cooper
 Attorney for Plaintiffs

By: 

Christopher Sproul
 Attorney for Plaintiffs

DOWNEY BRAND LLP

By:

A handwritten signature in cursive script, appearing to read "Melissa Thorne", written over a horizontal line.

Melissa Thorne
Attorney for Defendants

~~[PROPOSED]~~ ORDER

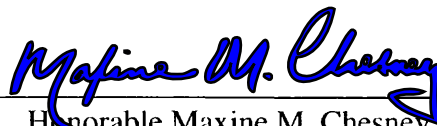
Based on the above stipulation of the parties, IT IS HEREBY ORDERED that all Plaintiffs' claims against West County Agency and Plaintiffs' Eighth, Ninth, Fifteenth, Sixteenth, and Seventeenth claims against Defendants relating to alleged effluent limitations violations from the Defendants' Wastewater Treatment Plants are dismissed in their entirety with prejudice. In addition, Complaint Paragraphs 64 and 65 are stricken and dismissed; and all references in the Complaint to biosolids, including in Paragraphs 36, 37, 45, 46, 47, 106, 107, 113, 116, are also stricken and dismissed. '

IT IS FURTHER ORDERED that nothing in the Parties' partial Settlement Agreement nor in this Order shall have any effect on Plaintiffs' remaining claims against Defendants asserted in this action.

IT IS SO ORDERED.

Dated: July 5, 2006

NORTHERN DISTRICT COURT OF CALIFORNIA



Honorable Maxine M. Chesney
United States District Court
Northern District of California

SETTLEMENT AGREEMENT

1 This Settlement Agreement ("Settlement Agreement" or "Agreement") is entered into between
2 Plaintiffs Baykeeper and the West County Toxics Coalition ("Plaintiffs") and Defendants City of
3 Richmond ("Richmond"), West County Wastewater District ("WCWD"), West County Agency
4 ("WCA"), and Veolia Water North America Operating Services ("Veolia") (collectively, "Defendants")
5 (Plaintiffs and Defendants are hereinafter collectively referred to as the "SETTLING PARTIES") with
6 respect to the following facts, objectives and commitments:

7 **WHEREAS**, Plaintiffs are non-profit corporations dedicated to, among other things, the
8 protection and enhancement of the water quality of the San Francisco Bay-Delta Estuary and to protect
9 the communities of West Contra Costa County against toxic threats in the area;

10 **WHEREAS**, Defendants own and/or operate publicly-owned treatment works that collect, treat,
11 and discharge wastewater generated by residential, commercial, and industrial sources, pursuant to
12 California Regional Water Quality Control Board, San Francisco Bay Region, ("Regional Board") Order
13 No. 01-144, National Pollutant Discharge Elimination System ("NPDES") permit No. CA0038539 (the
14 "NPDES Permit");

15 **WHEREAS**, on July 14, 2005, Plaintiffs provided Defendants, the Administrator and the
16 Regional Administrator for Region IX of the United States Environmental Protection Agency ("EPA"),
17 and the Executive Director of the California State Water Resources Control Board with a Notice of
18 Violation and Intent to File Suit ("60-Day Notice") under Sections 505(a) of the Federal Water Pollution
19 Control Act (the "Act" or "Clean Water Act" or "CWA"), 33 U.S.C. § 1365(a)(1) and (f). The 60-Day
20 Notice alleged, and Plaintiffs contend, that Defendants have violated and continue to violate the Act,
21 along with the terms and conditions of the NPDES Permit for sanitary sewage discharges and the City of
22 Richmond's permit for stormwater discharges;

23 **WHEREAS**, on September 22, 2005, Plaintiffs filed their Complaint in the United States
24 District Court for the Northern District of California against Defendants (Case No. C 05-03829 EDL);

25 **WHEREAS**, the purpose of Plaintiffs' Complaint is, *inter alia*, to eliminate effluent limit
26 violations at the Richmond and WCWD WWTPs and the WCA Confluence Structure;

27 **WHEREAS**, the SETTLING PARTIES, through their authorized representatives and without
28 either adjudication of any of the Complaint's claims or admission by Defendants of any alleged
violation or other wrongdoing, have chosen to resolve certain of Plaintiffs' claims against Defendants
through settlement and avoid the costs and uncertainties of further litigation;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of
which is hereby acknowledged, the SETTLING PARTIES each hereby agree as follows:

SETTLEMENT AGREEMENT**I. GENERAL OBJECTIVES**

1. The objectives of this Settlement Agreement are:
 - a. To ensure that the Defendants continue to improve efforts to come into and maintain compliance with the CWA;
 - b. To ensure that the Defendants continue to use, implement, and improve ways, means, and methods to eliminate violations of effluent limitations applicable to discharges of wastewater from the Richmond and WCWD WWTPs and the WCA Confluence Structure; and
 - c. To further the goals and objectives of the CWA.

II. DEFINITIONS

2. Unless otherwise expressly defined herein, terms used in this Settlement Agreement, which are defined in the CWA or in regulations, or rules promulgated under the CWA have the meaning assigned to them in the statutes or regulations or rules. Whenever terms listed below are used in this Settlement Agreement, the following definitions apply:

- a. "Settlement Agreement" means this Settlement Agreement, the Court's Stipulated Order of Dismissal, and any attachments or documents incorporated by reference to this Settlement Agreement.
- b. "WCA Confluence Structure" means the facility used to combine sanitary sewage effluent from the Richmond and West County Wastewater District ("WCWD") wastewater treatment plants ("WWTPs").
- c. "Day" means a calendar day. In computing any period of time under this Settlement Agreement, where the last day of such period is a Saturday, Sunday, or Federal or State Holiday, the period runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or State Holiday.
- d. "2001 Joint Permit" means National Pollutant Discharge Elimination System ("NPDES") Permit No. CA0038539, Order No. 01-144, as presently constituted and/or as subsequently revised or renewed.
- e. "Waters of the United States" has the meaning defined in 40 C.F.R. § 122.2.
- f. "Year" means fiscal year that runs from July 1 - June 30 of each year.

III. JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of the claims against Defendants asserted by Plaintiffs pursuant to CWA section 505(a), 33 U.S.C. § 1365(a), and 28 U.S.C. §§ 1331,

SETTLEMENT AGREEMENT

1 1355, and 1367. Venue is proper in this judicial district pursuant to section CWA §§ 309(b), 505(c), 33
2 U.S.C. §§ 1319(b), 1365(c), and 28 U.S.C. §§ 1391(b) and (c). The Complaint filed herein states claims
3 for which relief can be granted. The parties waive any and all objections that they may have to the
4 Court's jurisdiction to enter this Settlement Agreement.

IV. EFFECT OF SETTLEMENT AGREEMENT

5 4. Plaintiffs do not, by their consent to this Settlement Agreement, warrant or aver in any
6 manner that the Defendants' compliance with this Settlement Agreement will constitute or result in
7 compliance with any federal or state law or regulation. Nothing in this Settlement Agreement shall be
8 construed to affect or limit in any way the obligation of the Defendants to comply with all federal, state
9 and local laws and regulations governing any activity required by this Settlement Agreement.

V. APPLICABILITY

10 5. The provisions of this Settlement Agreement apply to and bind the Settling Parties,
11 including any successors or assigns. The Settling Parties certify that their undersigned representatives
12 are fully authorized to enter into this Settlement Agreement, to execute it on behalf of the Settling
13 Parties, and to legally bind the Settling Parties to its terms.

14 6. The Settling Parties agree to be bound by this Settlement Agreement and not to contest its
15 validity in any subsequent proceeding to implement or enforce its terms. By entering into this
16 Settlement Agreement, the Defendant(s) do not admit liability for any purpose as to any allegation or
17 matter arising out of this Action.

18 7. No change in ownership or corporate or other legal status of the Defendant(s) or any
19 transfer of the Defendant(s)' assets or liabilities shall in any way alter the responsibilities of the
20 Defendant(s) or any of its successors or assigns thereof, under this Settlement Agreement.

VI. EFFECTIVE DATE AND TERMINATION DATE

21 8. The term "Effective Date," as used in this Settlement Agreement, shall mean the last date
22 on which the signature of a party to this Settlement Agreement is executed.
23

VII. COMMITMENTS OF PARTIES

24 9. Stipulated Dismissal. Within five (5) days of the Effective Date of this
25 Agreement, Plaintiffs shall file a Stipulated Dismissal With Prejudice of all Plaintiffs' claims against
26 West County Agency and Plaintiffs' Eighth, Ninth, Fifteenth, Sixteenth, and Seventeenth claims against
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SETTLEMENT AGREEMENT

Defendants relating to alleged effluent limitations violations from the Defendants' Wastewater Treatment Plants with the United States District Court for the Northern District of California ("District Court"). In addition, as part of the Stipulated Dismissal, Complaint Paragraphs 64 and 65 will be stricken and dismissed as will all references to in the Complaint to biosolids, including in Paragraphs 36, 37, 45, 46, 47, 106, 107, 113, 116. Plaintiffs are responsible for notifying the Defendants of the District Court's entry of the Order dismissing these claims with prejudice.

10. Plaintiffs shall submit this Agreement to EPA and the U.S. Department of Justice ("DOJ") within five (5) days of the Effective Date of this Agreement for review consistent with 40 C.F.R. § 135.5. The review period expires forty-five (45) days after receipt by both agencies, as evidenced by the certified return receipts, copies of which shall be provided to the Defendants upon receipt by Plaintiffs. In the event that EPA or DOJ comments negatively on the provisions of this Agreement, the SETTLING PARTIES agree to meet and confer to attempt to resolve the issue(s) raised by EPA or DOJ. If the SETTLING PARTIES cannot resolve the issue(s) and the District Court chooses not to enter the Order, this Agreement is null and void.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

11. In recognition of the Defendants' past and future good-faith efforts to reduce effluent limit violations, within ten (10) days of the entry of the Court Order of dismissal of this action, the Defendants agree to fund a supplemental environmental project (SEP). Specifically, the Defendants shall jointly or severally pay to the Rose Foundation for Communities and the Environment ("the Rose Foundation") the total sum of \$80,000 ("the SEP Payment") to be used solely to fund supplemental environmental project activities that are physically located in or will benefit watersheds located in the political jurisdictions of the City of Richmond and/or West County Wastewater District or the area of San Francisco Bay seaward of this area'. Payment shall be made via certified check payable to "The Rose Foundation for Communities and the Environment," and sent via certified mail, return receipt requested, to:

The Rose Foundation for Communities and the Environment
6008 College Avenue, Suite 10
Oakland, California 94618
Attention: Tim Little

12. Plaintiffs shall ensure Defendants receive an annual accounting from the Rose Foundation specifying how the Rose Foundation dispersed any of the SEP Payment. Such accounting

SETTLEMENT AGREEMENT

shall indicate the recipient organization(s) of the SEP Payment and describe the projects funded. In any case, the Plaintiffs shall not receive any of the SEP Payment to use for any purpose.

IX. FEES, COSTS AND EXPENSES

13. To help defray Plaintiffs' attorneys, consultant, and expert fees and costs, and any other costs incurred as a result of investigating, bringing the alleged violations set forth in Plaintiffs' claims against West County Agency, Plaintiffs' Eighth, Ninth, Fifteenth, Sixteenth, and Seventeenth claims against Defendants, Complaint paragraphs 64 and 65, and allegations in the Complaint related to biosolids discharge, including in Paragraphs 36, 37, 45, 46, 47, 106, 107, 113, 116' to Defendants' attention, and negotiating a settlement, Defendants shall jointly and severally pay Plaintiffs the sum of \$57,000. Payment shall be made by the Defendants within forty-five (45) calendar days of the Effective Date, and held in trust by Downey Brand LLP for Plaintiffs. Downey Brand LLP shall deliver to Plaintiffs' counsel the entire sum within ten (10) days of receiving notice by Plaintiffs of the successful entry of the Order of the Stipulated Dismissal. Payment by Downey Brand LLP to Plaintiffs' counsel shall be made in the form of a single check payable to "Lawyers for Clean Water Attorney Client Trust Account" addressed to 1004 O'Reilly Avenue, San Francisco, CA 94129 sent overnight delivery and shall constitute full payment for all costs of litigation incurred by Plaintiffs that have or could have been claimed in connection with or arising out of Plaintiffs' claims against Defendants dismissed by this Settlement Agreement, up to and including the Order Entry Date.

X. NOTICES AND SUBMISSIONS

14. All documents required or contemplated by this Settlement Agreement shall be directed to the following individuals at the addresses specified below unless specifically stated otherwise herein. Any change in the individuals designated by either Party must be made in writing to the other Parties.

As to Plaintiff:

Daniel Cooper
Layne Friedrich
LAWYERS FOR CLEAN WATER, INC.
1004 O'Reilly Avenue
San Francisco, California 94129

SETTLEMENT AGREEMENT

Christopher Sproul
ENVIRONMENTAL ADVOCATES

5135 Anza Street

San Francisco, California 94121

E-mail: csproul@enviroadvocates.com

[Note: Defendants shall send to Environmental Advocates electronic copies only of all relevant documents available to them in electronic copy]

If to Defendants:

Melissa Thorne or Nicole Granquist

Downey Brand LLP

555 Capitol Mall, 10th Floor

Sacramento, CA 95814

XI. MUTUAL RELEASE OF LIABILITY

15. In consideration of the above, upon the Order Entry Date of this Agreement, the SETTLING PARTIES hereby fully release, except for claims for the Defendant's failure to comply with this Settlement Agreement, each other and their respective successors, assigns, officers, agents, employees, and all persons, firms and corporations having an interest in them, from any and all Clean Water Act violations claimed in Plaintiffs' claims against Defendants dismissed by this Settlement Agreement up to and including the Order Entry Date of this Settlement Agreement.

16. Nothing in this Settlement Agreement limits or otherwise affects Plaintiffs' right to address or take any position that it deems necessary or appropriate in any formal or informal proceeding before the Regional Board, EPA, or any other judicial or administrative body on any other matter relating to Defendants.

XII. GENERAL PROVISIONS

17. No Admission Or Finding. Neither the Settlement Agreement nor any payment pursuant to the Settlement Agreement shall constitute or be construed as a finding, adjudication, or acknowledgment of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation. The Defendants maintain and reserve all defenses they may have to any alleged violations that may be raised in the future.

18. Construction. The language in all parts of this Settlement Agreement shall be construed according to its plain and ordinary meaning, except as to those terms defined in the NPDES Permits, Clean Water Act, or specifically herein.

SETTLEMENT AGREEMENT

19. Choice of Law. The laws of the United States shall govern this Agreement.

20. Severability. In the event that any provision, paragraph, section, or sentence of this Settlement Agreement is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

21. Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall constitute one original document. Electronic, telecopy, and/or facsimile copies of original signature shall be deemed to be originally executed counterparts of this Agreement.

22. Modification of the Agreement. This Agreement, and any provisions herein, may not be changed, waived, discharged, or terminated unless by a written instrument, signed by the SETTLING PARTIES.

23. Full Settlement. This Settlement Agreement constitutes a full and final settlement of Plaintiffs' claims against West County Agency; Plaintiffs' Eighth, Ninth, Fifteenth, Sixteenth, and Seventeenth claims against remaining Defendants; allegations of violation in Complaint Paragraphs 64 and 65; and all Complaint allegations of violation related to the discharge of biosolids, including in Complaint Paragraphs 36, 37, 45, 46, 47, 106, 107, 113, and 116. '

24. Integration Clause. This is an integrated partial Settlement Agreement. This Settlement Agreement is intended to be a full and complete statement of the terms of the agreement between the parties and expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this Settlement Agreement.

25. Authority. The undersigned representatives for Plaintiffs and Defendants each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Settlement Agreement.

The SETTLING PARTIES hereby enter into this Settlement Agreement.

Date: _____

CITY OF RICHMOND

By: Bill Lindsay, City Manager

SETTLEMENT AGREEMENT

1 Date: _____

VEOLIA WATER NORTH AMERICA OPERATING
SERVICES LLC

By: _____

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8 Date: 6/28/06

WEST COUNTY AGENCY, AND WEST COUNTY
WASTEWATER DISTRICT

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10
11
12 By: E.J. SHALABY, GENERAL MANAGER

13
14 Date: 6/28/06

BAYKEEPER

15
16
17
18
19 By: Sejal Choksi

20
21 Date: 6-28-06

WEST COUNTY TOXICS COALITION


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26 By: Henry Clark

SETTLEMENT AGREEMENT

1 APPROVED AS TO FORM:

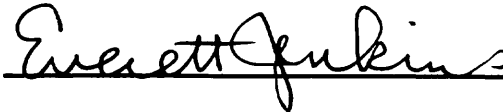
2 For DEFENDANTS:

3 DOWNEY BRAND LLP

4 

5 By: Melissa A. Thorne

6 CITY OF RICHMOND

7 

8 By: Everett Jenkins

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10
11 WEST COUNTY WASTEWATER DISTRICT and WEST
12 COUNTY AGENCY

13 

14 By: Alfred Cabral

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16 VEOLIA WATER NORTH AMERICA OPERATING
17 SERVICES

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19 By: Melissa Thorne for Brian Clarke

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21 For PLAINTIFFS:

22 LAWYERS FOR CLEAN WATER INC.

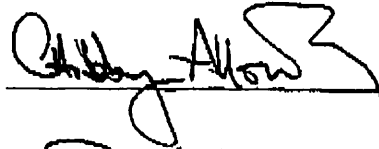
23 

24 By: Daniel Cooper

SETTLEMENT AGREEMENT

1 Date: 6/28/06

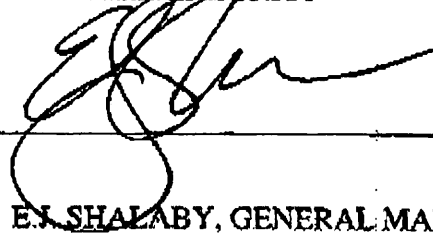
VEOLIA WATER NORTH AMERICA OPERATING
SERVICES LLC

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3 
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5 By: President Veolia

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7
8 Date: 6/28/06

WEST COUNTY AGENCY, AND WEST COUNTY
WASTEWATER DISTRICT

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10 
11

12 By: E.J. SHALABY, GENERAL MANAGER

13
14 Date: 6/28/06

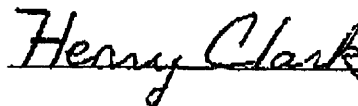
BAYKEEPER

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17 
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19 By: Sejal Choksi

20
21 Date: 6-28-06

WEST COUNTY TOXICS COALITION

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25

26 By: Henry Clark

SETTLEMENT AGREEMENT

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4 shall not be adversely affected.

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13 Seventeenth claims against remaining Defendants; allegations of violation in Complaint Paragraphs 64
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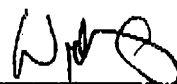
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19 and warranties (express or implied) concerning the subject matter of this Settlement Agreement.

20 25. Authority. The undersigned representatives for Plaintiffs and Defendants each certify
21 that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions
22 of this Settlement Agreement.

23 The SETTLING PARTIES hereby enter into this Settlement Agreement.

24 Date: 6/28/06

25 CITY OF RICHMOND

26 

27 By: Bill Lindsay, City Manager